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BEFORE THE WATER POLLUTION CONTROL
ADVISORY COUNCIL (WPCAC)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111, Metcalf Building
1520 East Sixth Avenue
Helena, Montana
August 24th, 2012
10:00 a.m.

CHAIRMAN TREVOR SELCH; MEMBERS
DUDE TYLER, EARL SALLEY, KEITH SMITH,
STEVIE NEUMAN, KAREN BUCKIN-SANCHEZ, KATHLEEN
WILLIAMS, and MICHAEL WENDLAND

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1 WHEREUPON, the following proceedings were²
2 had:

3 * * * * *

4 CHAIRMAN SELCH: With that we'll call
5 the meeting to order. I appreciate you guys all
6 showing up. We have a fairly brief meeting, but
7 we have a couple of briefing items to go through
8 today. Before we actually move on, Amy is going
9 to introduce one of our new Council members, and I
10 think after she does that, we'll go around and
11 we'll all introduce ourselves as well.

12 MS. STEINMETZ: So as I think everybody
13 knows, Richard Hoehne retired a couple of months
14 ago and resigned his position on WPCAC, and we
15 have a new member, Keith Smith from Hamilton.
16 He's the Public Works Director there. And we're
17 glad to have him here.

18 MR. SMITH: Thank you.

19 MS. STEINMETZ: Also I wanted to
20 introduce the new Standards supervisor. Bob also
21 retired. Eric Urban is the new supervisor of the
22 Water Quality Standards Section. Because you all
23 work so much with Standards, I thought it would be
24 good to introduce him as well.

25 CHAIRMAN SELCH: We'll start with

1 Stevie.

2 MS. NEUMAN: Stevie Neuman, and I'm
3 representing the Conservation Districts in
4 Montana, which there are 58, and we have 56
5 counties, and I live west of Great Falls.

6 MS. WILLIAMS: Kathleen Williams. I'm a
7 public member. I live in Bozeman. I'm also a
8 State legislator, and they still let me stay on,
9 so it has been a pleasure to serve.

10 MR. WENDLAND: I'm Mike Wendland, and
11 represent production agriculture, and live in
12 Rudyard, Montana, which is 200 miles north of
13 here. And during my term here, my tenure, I've
14 been elected as a County Commissioner, and like
15 Kathleen, they've let me stay on to represent.

16 MR. SALLEY: I'm Earl Salley. I
17 represent industries with concerns about the
18 disposal of inorganic waste. I was an operating
19 engineer. I worked at a wastewater treatment
20 plant for 23 years, and represented the Operating
21 Engineers.

22 MR. SMITH: As you know, I'm Keith
23 Smith, Public Works Director in Hamilton south of
24 Missoula in the Bitterroot Valley.

25 MS. BUCKIN-SANCHEZ: I'm Karen Sanchez.

1 It's my responsibility here to represent
2 professional sanitary engineers. My background
3 and experience includes work at DEQ, and also for
4 a funding agency that funds small communities
5 infrastructure.

6 MR. TYLER: Dude Tyler, Livingston. I'm
7 representing realtors and developers.

8 CHAIRMAN SELCH: I'm Trevor Selch. I
9 represent fisheries here, and I'm based out of
10 Helena.

11 MS. STEINMETZ: Amy Steinmetz,
12 Environmental Quality.

13 MS. CRIDER: Stephanie Crider,
14 Environmental Quality.

15 CHAIRMAN SELCH: Welcome aboard, Keith.
16 Glad to have you here. With that, we'll move on
17 to our approval of the agenda. Has everyone had a
18 chance to look at the agenda from last time's
19 meeting? If so, is there any edits or changes
20 that anyone sees?

21 MS. WILLIAMS: I'll make a motion to
22 accept.

23 MR. TYLER: Second.

24 CHAIRMAN SELCH: Agenda approved. So I
25 guess moving on to the approval of the minutes

5
1 from our June 29th meeting. Have you had a chance
2 to look at that? I guess the approval of our
3 minutes -- jumped ahead of ourselves there.
4 Approve the agenda for today. We just have two
5 briefing items, and also one short action item as
6 well. Does anyone have any edits or additions to
7 the agenda?

8 (No response)

9 CHAIRMAN SELCH: Hearing none --

10 MS. NEUMAN: I move we approve the
11 minutes of the June 29th meeting.

12 CHAIRMAN SELCH: So the agenda and
13 minutes have been approved. With that we'll move
14 on to --

15 MS. WILLIAMS: Do we vote after we move
16 to make --

17 CHAIRMAN SELCH: Sure. Sorry. Let's
18 just start with the agenda. I got back a little
19 late last night. We'll first take a vote on the
20 agenda. Everyone in favor.

21 (Response)

22 CHAIRMAN SELCH: Opposed.

23 (No response)

24 CHAIRMAN SELCH: Motion carries.
25 Approval of minutes. Everyone in favor?

1 MS. NEUMAN: We needed a second, I⁶
2 think.

3 MR. TYLER: Second.

4 CHAIRMAN SELCH: Approval of our minutes
5 from June 29th, everyone in favor.

6 (Response)

7 CHAIRMAN SELCH: Opposed.

8 (No response)

9 CHAIRMAN SELCH: Motion carries.

10 Our first briefing item is the Numeric
11 Nutrient Standards Rule package, and we have Mike
12 Suplee.

13 MR. SUPLEE: Good morning, everybody. I
14 hope you've had an opportunity to look over the
15 rule package. And I wasn't really sure exactly
16 how to go through this, but I thought maybe the
17 best way would just be to kind of go through the
18 pieces and parts of it, and as we go through it,
19 if you have questions, we'll do that. We should
20 have lots of time for questions at the end anyway.

21 I have one hand out, which has sometimes
22 proven helpful for working with the Nutrient Work
23 Group in explaining this process, because there
24 are aspects of it that are sometimes kind of
25 complicated. So I'll pass that around.

1 In your mailing you should have received
2 three items: Circular DEQ12 -- which I see a lot
3 of copies of those; there should have been a rule
4 package; and there should have been a guidance
5 document, which had kind of a double title. It
6 looks like this. (Indicating)

7 So I'll go through. I'll start with the
8 circular, and kind of talk about the basis of the
9 standard, what's in the circular, and kind of show
10 the linkages back to the rule package and key
11 parts. Again, jump in and ask questions, please,
12 at any time.

13 So because the Nutrient Standards, based
14 on the science that we've done, have shown that
15 the numbers are going to be relatively stringent,
16 we also realized we needed some kind of an
17 implementation process that can phase these
18 standards in over time, and that turned out to be
19 the variance process, which is kind of captured in
20 this circular together.

21 So there's two pieces in the circular,
22 Part A and B. Part A is adopted by the Board, and
23 basically contains the scientifically derived
24 criteria and some stuff pertaining to permits, so
25 I'll start with that part. And I think the guts

1 of it really are on Page 3 where we have listed
2 out the standards that we are recommending for the
3 different regions.

4 So the way it works is at the top of the
5 table you have the standards recommended for
6 streams, wadeable streams and rivers, for these
7 ecoregions or groups of ecoregions. And you can
8 see the period of application. So generally they
9 apply in summer, so these are not year around
10 standards.

11 Then on the right you'll see something
12 called "Related Assessment Information." These
13 are other types of information that we use to
14 assess nutrification in streams that we're not
15 proposing as standards per se, but would be used
16 in conjunction with the nutrient standards in an
17 assessment methodology that the Department has
18 already developed in order to assess streams on a
19 case-by-case basis.

20 So they kind of are ranked hierarchical
21 in that we have the coarsest level is Level III
22 ecoregions that you'll see at the top, the
23 Northern Rockies, Canada Rockies, Idaho batholith,
24 etc.

25 Going down, if there is a group within

9

1 the Middle Rockies or another ecoregion which
2 needs to have criteria set out for its own area
3 because the streams are different in that region,
4 we've done that. For example, if you look, you'll
5 see the Middle Rockies about four lines down. The
6 criteria there we are recommending are 30 TP and
7 300 TN.

8 But immediately below that there is
9 something called Absaroka Gallatin Volcanic
10 Mountains. That's actually a subregion within the
11 Middle Rockies, and it has much different
12 standards, as you can see. The total phosphorus
13 levels are much higher. In that case, that's
14 because natural background geology leads to higher
15 natural phosphorus levels in these stream systems,
16 and we've identified that.

17 So the way it works then is the Middle
18 Rockies, Level III or the coarse levels ones are
19 shown in bold; and immediately below that in
20 italics, if there is shown something, that means
21 that that's a subset of the previous.

22 You can see once we get to the
23 northwestern glaciated plains that the numbers
24 change considerably relative to western Montana,
25 especially for nitrogen. Plains streams are very

10
1 different ecologically, and that is reflected in
2 the kind of criteria that we're finding are
3 appropriate for them.

4 You'll see, like for example underneath
5 the northwestern glaciated plains, there is a
6 whole series of small scale ecoregions: The
7 Sweetgrass uplands, the Milk River Potholes, etc.

8 These are basically the transitional
9 zones where the Rocky Mountains spill out onto the
10 plains, and the streams there are kept kind of a
11 transitional nature between mountainous streams of
12 western Montana, and the plain streams of the
13 east, and the criteria kind of reflect that
14 because generally the concentrations we're finding
15 appropriate for them fall sort of in between the
16 two. So that's kind of the basis for the
17 ecoregionally based criteria.

18 Next we have individual reaches for
19 wadeable streams, so because the ecoregion system
20 is not perfect, and we know that not every single
21 stream in an ecoregion is going to fit the pattern
22 that is common to the ecoregion, there are cases
23 where we need to break out different criteria for
24 individual streams, and we've done that in some
25 cases.

11
1 Why that occurs varies. For example,
2 Flint Creek is highly influenced by Georgetown
3 Lake. Georgetown Lake has a bottom water
4 withdrawal, which leads to higher phosphorus
5 levels in the stream throughout the year.

6 And you can see, for example there we're
7 suggesting that the criteria for that be 72
8 micrograms total phosphorus per liter. That's
9 about half of what the Middle Rockies value is
10 typically. So that's one case where a large water
11 body, upstream water body, is influencing the
12 water quality of the stream, and that's reflected
13 in the standards.

14 In other cases, for example some of the
15 East Gallatin River and Bozeman Creeks, these are
16 directly influenced by the phosphorus deposits
17 that I mentioned upstream, but the streams
18 themselves lie in the middle Rockies. They lie
19 downstream. And so essentially what we've done is
20 accounted for the mixing of this higher phosphorus
21 water with lower phosphorus level water, and
22 derived the criteria that's appropriate for those
23 streams.

24 Most of you will remember, or some of
25 you will remember that the Clark Fork River had

12
standards adopted for it in 2002, both for
nitrogen, phosphorus, and Chlorophyll A, and that
has been moved from the rules -- which is where
it's currently housed -- into the Circular, so
that all of the nutrient type standards can be in
one place.

And the first place that's mentioned
here is at the bottom of the individual reaches
where it says, "Clark Fork River, Warm Springs
Creek, confluence to the Bitterroot."

The one thing that's different about the
Clark Fork is that -- and that's what that "N"
note six is -- is that they will be, unlike the
wadeable streams, we've already adopted algae
standards for the Clark Fork River, and those will
be retained going forward, so that kind of makes a
bit of an exception relative to the wadeable
streams that we've got shown here.

Finally we have individual reaches for
large rivers, and this piece of the Clark Fork
River is a large river by our definition, and you
can see it there. And then we used a water
quality model to derive numeric nutrient standards
for two sections of the Lower Yellowstone River,
from basically Forsyth to the state line, and

1 their standards are shown there.

2 MR. SMITH: Is there a map anywhere that
3 shows these ecoregions? I'm not familiar with
4 everything.

5 MR. SUPLEE: Yes. There's a lot of them
6 out there. They're online. We have them in the
7 Department. Maybe it would be smart going forward
8 to have a map included in the Circular someplace.

9 MR. SMITH: Yes, because I don't know
10 from like Kalispell to the Northern Rockies, but
11 it may be the Canadian Rockies. I'm not familiar
12 with the ecoregions of the state.

13 MR. SUPLEE: There is, and I'll make
14 sure that that map is included going forward.
15 That would be a good addition.

16 MS. BUCKIN-SANCHEZ: I have a question
17 as well. Is this just for three months of the
18 year then?

19 MR. SUPLEE: Yes.

20 MS. BUCKIN-SANCHEZ: So could a
21 discharging system just not discharge for three
22 months?

23 MR. SUPLEE: Yes. That's actually an
24 option that some dischargers are considering, go
25 to land application for the summer or these sorts

1 of things.

2 We have other types of standards that
3 relate to nutrients that are year around, and they
4 are either based on toxicity of fish, or they're
5 based on human health. But these criteria where
6 the concentrations tend to be much lower are
7 really designed to control the effects of
8 nutrification, which is summertime growth of
9 excess algal growth plants, which can lead to
10 dissolved oxygen problems, pH change that harm
11 fish, and those sorts of things. So that's where
12 they're constrained to that summer period.

13 That is also how the criteria were
14 originally adopted on the Clark Fork River, and it
15 seems to be working rather well down there.
16 They're definitely seeing improvements in that
17 area.

18 MR. SMITH: Since I'm new on this -- I
19 know you guys have been covering this for the past
20 year -- The TMDL studies, are they only for
21 summertime, or will they be year around standards?

22 MR. SUPLEE: The TMDL's have to reflect
23 water quality standards, not the other way around.
24 So a TMDL, if they were to have a nutrient
25 standard in it, would be reflective of a

1 summertime application.

2 MR. SMITH: So as far as we know right
3 now, there is no standards for the winter time?

4 MR. SUPLEE: Not for these type of
5 standards. There are for human health and for
6 ammonia, but those concentrations are considerably
7 higher than this, and they're based on --

8 MR. SMITH: They're similar to what our
9 current permits are then.

10 MR. SUPLEE: Exactly.

11 MS. WILLIAMS: The river breaks entry
12 where there is none recommended, can you explain
13 that a little bit.

14 MR. SUPLEE: Sure. There is a region --
15 Basically if you go to Miles City, have been to
16 Miles City, and you've seen a lot of that
17 dissected country up there, or you have been
18 through the Missouri Breaks, seen a lot of that
19 highly eroded areas that run along each side of
20 the Missouri over there, those have been
21 identified as the Missouri Breaks.

22 We have eight reference sites
23 distributed throughout those areas, something on
24 the order of 30 total nitrogen and total
25 phosphorus samples collected between those eight

1 reference sites.

2 And there the concentrations that we see
3 naturally in these reference sites are
4 considerably higher than the highest
5 concentrations that we have -- any kind of a cause
6 effect relationship even in the plains. We see
7 little to no algal growth almost, no macrophytes.
8 Sometimes we see phytoplankton blooms, but that's
9 pretty rare, usually in September.

10 And whenever it rains out there, the
11 stream are washed by extremely high turbidity,
12 very turbid water, which flashes, and then a
13 series of disconnected pools are usually left
14 which will persist for anywhere from days to weeks
15 or sometimes all summer.

16 And when we looked at the
17 concentrations, they were so high, there was
18 nothing that we could -- that I personally as a
19 scientist could come up with to recommend as a
20 number to protect something.

21 The conditions there are already so
22 extreme that the fisheries and all that is
23 probably much more hampered by turbidity and
24 physical constraints than any kind of biological
25 growth or excessive plant growth. You just don't

1 see the plant growth.

2 So for that reason, we basically, or I
3 personally -- since I'm the one that developed
4 those -- suggested that we don't create any for
5 that region.

6 MS. WILLIAMS: Just a suggestion. I
7 don't know if it is correct, but instead of none,
8 I don't know if we would want to say that "Other
9 standards apply," or something. It almost looks
10 like there is just no treatment at all or
11 something. Just a thought.

12 MR. SUPLEE: Sure. Maybe we could
13 rephrase that. It is a fact that all the other
14 standards that we have, like total nitrogen or the
15 nitrogen criteria for nitrates for human health
16 apply there, or ammonia would apply there, but
17 nitrification based criteria, I don't think. So
18 if you can come up with some wording that you like
19 better, I'd be happy to change that.

20 MS. WILLIAMS: Just for the public
21 understanding, I think.

22 MR. SUPLEE: Okay. Any other general
23 questions pertaining to the criteria themselves,
24 at least the wadeable streams and rivers?

25 (No response)

1 MR. SUPLEE: One thing that I would want
2 to point out. Sometimes this is a little bit of a
3 myth busting exercise. Some people have the
4 impression that these criteria are so low that
5 we'll actually diminish or hamper the fisheries.

6 In fact, most of the reference streams
7 that we look at, something on the order of 80 to
8 100 percent of the samples that we collect in
9 reference streams where there are trout fisheries,
10 etc., have concentrations lower than these.

11 So what we have found is the scientific
12 literature tends to show that at these
13 concentrations, you are going to get just about a
14 peak fishery. When you start to go beyond these
15 concentrations, then you start to move into the
16 area where excessive algal growth and excess plant
17 growth leads to dissolved oxygen problems, which
18 begins to impact the juvenile fish, pH changes,
19 etc.

20 So nutrients are one of these odd kind
21 of standards where none is bad; and when it is
22 just right, it is good; and then too much is too
23 much. And so the criteria tend to be set
24 somewhere near that threshold of just right in
25 terms of fishery production.

1 So if we do have streams that are
2 currently above these, and we restore them down to
3 these levels, you will not see a fishery collapse,
4 I guess is what I'm arguing. The scientific
5 literature shows exactly the opposite.

6 On the other hand, if you have streams
7 that are very much cleaner than these levels, and
8 you increase the levels up to these
9 concentrations, you will see changes in the basic
10 bio and flora that could be -- depending your
11 point of view -- considered an impairment or not.
12 It all depends on what your viewpoints on that is.

13 So that's the river and stream criteria,
14 and they are -- I think I'll jump over for a
15 moment just to the rule package.

16 So in the rule package, those DEQ12
17 criteria are incorporated in a couple of places.
18 Most of them would all make pretty much sense to
19 you. They're incorporated by reference, so that
20 we have a dated version of the circular referenced
21 in our rules. And as we make updates to the
22 circular, we can just change the date there.

23 DEQ12 is then incorporated throughout
24 the classifications -- A-1, B-1, B-2, B-3
25 standards. In all those places where we refer to

20
1 the different stream classes, the circular has
2 been incorporated. And that's the main places
3 where we talk about DEQ12 in the rule package. So
4 it is basically just -- you can kind of think
5 about it as being incorporated alongside of DEQ7
6 as part of our numeric criteria.

7 The one exception to the way it's
8 written is -- and I'll get into that detail in a
9 second. It will be better to explain it when we
10 get to the variance part, so I'll come back to
11 that.

12 So that was wadeable streams and large
13 rivers. And by the way, work is ongoing on large
14 rivers for the state as we speak. Right now, this
15 summer, we're working on developing nutrient
16 standards for the Yellowstone River from
17 Livingston down to the Big Horn River, and so that
18 would affect the Billings/Laurel area and all of
19 the facilities through there. But that's going to
20 be a year or two out before we have those criteria
21 developed.

22 On Table 12A-2, which is on the next
23 page on Page 4, we have a table which is a place
24 holder for lakes and reservoirs. Right now we
25 only have a single lake that we have in here as

21

1 for criteria, and that's Flathead Lake, and that
2 work is based pretty much exclusively on the
3 twenty plus years of work that the Flathead Lake
4 Biological Station has carried out, and these are
5 criteria that we have discussed with them and they
6 have recommended to us. So it is very similar to
7 the other standards.

8 We have numeric standards for total
9 phosphorus, for total nitrogen, and we have
10 another set of standards that we have added which
11 are unique to lakes. You'll see that. It says
12 "Other standards." You'll see there is a standard
13 for secchi depth, so that's water clarity; also a
14 standard for phytoplankton chlorophyll levels, so
15 that and water clarity are closely linked in
16 lakes.

17 Then on the far right, we again have
18 related assessment information, and that pertains
19 to some soluble criteria that they have suggested
20 are valuable as an assessment for the lake.

21 But the actual standards would be the
22 five micrograms TP, the 95 micrograms TN, and the
23 secchi depth and the phytoplankton. And these,
24 unlike the criteria for streams and rivers, these
25 apply year around, so these are year around

1 standards.

2 Any questions on our fairly limited lake
3 standards? We are continuing to work on lake
4 standards, but they're still several years out.
5 We've put more energy on rivers and streams
6 through the program.

7 The next table there is just Required
8 Reporting Values for total nitrogen, total
9 phosphorus, for people that are going to be having
10 compliance regulations, etc., associated with
11 meeting these standards, and those are the levels
12 that they need to achieve by their labs. We've
13 already vetted those, and Amy has worked on
14 deriving many of these, using the same processes
15 that are used in DEQ7.

16 And then in the next part in 2.2, we
17 briefly discuss how permits are to be developed,
18 and essentially what we have done is we've taken
19 existing parts of the permitting process that are
20 most relevant to chronic type criteria, and apply
21 it to the nutrient standards. And we've also
22 established a low flow period against which
23 permits are developed. That's that seasonal
24 14Q-5.

25 Now, in DEQ7, we usually do a -- what

23
1 our low flow is for 7Q10. And we've done a
2 significant amount of analysis to figure out what
3 would be an appropriate low flow for nutrients,
4 and we've come up with 14Q5 as our recommended
5 flow, and it is a seasonal flow. So again, it's
6 based on that summertime period. So the data that
7 are used to derive that flow only apply in the
8 summertime.

9 MS. WILLIAMS: That's the fourteen day,
10 5 percent?

11 MR. SUPLEE: Yes. It is the fourteen
12 day low flow that occurs on average every five
13 years during the summer.

14 So any general questions on -- So that's
15 really kind of all the most important parts of
16 Part A, which is the part that the Board would
17 adopt. So the Board will have to look at Part A
18 and decide if the criteria seem appropriate to
19 them, and the permitting process we've derived is
20 appropriate, etc., etc. That's all their purview,
21 and that ends at Part A.

22 MS. WILLIAMS: How does it work -- Is
23 that sort of a work in progress? You're going
24 with a rule package, but you've got some place
25 holders, and then the large rivers are still being

1 worked on. So what's the relationship there? ²⁴

2 MR. SUPLEE: Well, I think you could
3 probably apply that argument to all water quality
4 standards. Every couple like three years, we come
5 and we say we have an update to the ammonia
6 standard, we have an update to this. So this
7 whole process is always ongoing.

8 And so we just recognize that the
9 Department continues to work on developing
10 criteria for large rivers. We've recognized that
11 those are best done case-by-case, and that takes
12 time.

13 And so we will just come forward in the
14 future, is my assumption, and some of these place
15 holders would fill with appropriate criteria to
16 pass before the same process through WPCAC,
17 through BER, and proposed for adoption, but it is
18 not going to happen -- this is going to spread out
19 over quite a few years. But we have --

20 I think what we did is we've reached the
21 point where we have such a large body of work
22 done, especially for wadeable streams, that we
23 felt that the package was pretty comprehensive,
24 and now we're filling in gaps. That's not
25 necessarily true for the largest rivers -- I mean

25
1 there is a lot of large rivers out there -- but
2 the time involved to develop those standards is
3 substantial, and so it is just going to have to
4 take more time to get those in place.

5 Any other questions about Part A that
6 any of you want to discuss or go over on Part A?

7 CHAIRMAN SELCH: Mike, when you get to
8 like the reservoirs, I assume it is a year around
9 standard, but there's probably going to be
10 specific, like the riverine, transitional --

11 Like are you going to separate out the
12 riverine, transitional and lacustrine zones,
13 reservoirs? Are you going to separate those
14 zones? Are those going to be kind of tied into
15 the large rivers? Because typically that's
16 that --

17 MR. SUPLEE: Yes. We've been talking
18 about that. Our first targeted large reservoir to
19 work on is Canyon Ferry. Canyon Ferry, the main
20 issue I think is not toxic, but nuisance algal
21 blooms almost every summer. Some of those have
22 taste and odor issues associated with them as
23 well, and so we'll be looking at that. And it may
24 result that it is a loading type of standard,
25 which is a possibility.

1 So we're going to use a water quality
2 model, and we have all of the water quality data
3 we need from the Upper Missouri, and we've been
4 working on that for one or two years now, to piece
5 all that together. How that standard will
6 actually look I'm not quite sure yet, so we may
7 have it divvied up as you suggest, or it might be
8 a load.

9 Loads have been used traditionally going
10 back to the 1960s as an alternative to an actual
11 in-lake standard.

12 MS. NEUMAN: Is there anything on the
13 Missouri?

14 MR. SUPLEE: Where we're at on the
15 Missouri is we collect the data on the Upper
16 Missouri, so that would be Three Forks to Canyon
17 Ferry in ten and eleven; and we are working to
18 develop the model now. So there is nothing here
19 because the data then has to be put in the model,
20 calibrated, validated, double checked, and
21 ultimately a number will come out, kind of what
22 we've done for the Yellowstone River. It's
23 probably a couple years out. So we do have the
24 basic data set available to begin to work on that.

25 MS. NEUMAN: Thank you.

1 MR. SUPLEE: So that's the criteria.
2 All of them, to the best of the Department's
3 ability, science based.

4 And then we come to Part B, which is the
5 implementation part. And I think I've mentioned
6 this to this body before, is that we realized
7 quite early on that these stringent standards were
8 going to be difficult to meet, and had the
9 potential for significant economic impact to the
10 state if they were to be met right away.

11 And so we began working around 2006 to
12 try to figure out how to implement these in a more
13 phased manner, and looking at the existing laws
14 that are available for water quality standards,
15 and how that would work.

16 We ended up working through a variance
17 process, and essentially that means that a person,
18 if they can't meet the standards at the end of
19 their mixing zone, simply the amount of dilution
20 available, they can apply for and will receive a
21 variance if they can meet certain statute defined,
22 basically mechanical treatment levels.

23 So those were defined in 2011, and we
24 have those established in statute, and they're
25 based by group. So if you are a discharger that

1 is greater than one million gallons per day, and
2 you can meet one milligram TP and ten milligrams
3 TN per liter, then if you can't meet the
4 standards, but you can meet those, then you can
5 operate under those treatment levels for a period
6 of time up to twenty years. It is another level
7 for the smaller plants.

8 Then for lagoons, since we really don't
9 know how -- There isn't really any real good
10 technology out there right now for a lot of
11 lagoons. We have them on a maintain current
12 status type approach at this point in time.

13 So the way it would work in terms of
14 permits is a person would come in, once these
15 standards were adopted, and Permitting would
16 calculate what the permit limit needs to be based
17 on these criteria.

18 If they happen to be a small discharger
19 into a big river, and the criteria are fairly
20 reachable, then they might be able to achieve it
21 right then and there. The Clark Fork River in
22 Missoula is a pretty similar case. They're pretty
23 close to achieving, or right at achieving these
24 sorts of standards right now.

25 On the other hand, if they are a bigger

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1 discharger into a smaller water body, and there is
2 not a lot of dilution, they may do the
3 calculations and determine that they're going to
4 be considerably above the concentrations here; and
5 then at that point, the permittee can apply for
6 the general variance if they can meet those other
7 levels that we defined. And there is other
8 aspects to it as well.

9 So that's the general variance, which is
10 the most broad, over the -- broad reaching. And
11 essentially if you can achieve those values, and
12 you can do that, then you will get the general
13 variance. The statute is very clear about that.

14 There are cases where individual
15 dischargers may not even be able to achieve the
16 general variance concentration defined in statute.
17 They may find that too expensive for their
18 particular community and their particular
19 situation. They can apply for individual
20 variances, which is an economic demonstration that
21 if it's going to cost them too much, and if it is
22 approved by the Department, then they may be able
23 to discharge at even coarser levels than the
24 general variance concentrations in statute.

25 So that's kind of the two major types of

1 variances, and a lot of that is discussed in New
2 Rule 1. So New Rule 1, going back to the rule
3 package itself, really is kind of the heart of the
4 entire rule package in terms of how the Department
5 is going to handle intermediate levels of
6 treatment until the time that the standards are
7 met, which we presume will be twenty plus years
8 down the road, except in those cases where they
9 can be met sooner.

10 Has everybody has a chance to read
11 through the rule package? Was there anything
12 specific -- There is a lot of moving parts to it,
13 so I thought maybe at this point I might kind of
14 open it up to questions, or we could go through
15 this little flow chart if we wanted to. I kind of
16 wanted to see how that would work the best.

17 MS. BUCKIN-SANCHEZ: Mike, I appreciate
18 all of the work and time that has been taken with
19 the nutrient group, and I think it is all
20 intricate and related. I have two comments, and
21 maybe the work group has gone over these before.

22 One is: I'm finding in my work that
23 there is confusion in the general public, maybe
24 even consulting engineers, and certainly with town
25 councils, some confusion about -- that it is not a

31
1 waiver, that it is a variance. So that's one
2 item. And I guess that just takes working with
3 people, and helping the public in general to
4 understand that it is a variance, not a waiver.

5 MR. SUPLEE: What would be a distinction
6 would be if they thought it was a waiver, it just
7 means that those numbers --

8 MS. BUCKIN-SANCHEZ: The perception that
9 I'm hearing is that you can apply for this
10 variance and then you --

11 MR. SUPLEE: You're done.

12 MS. BUCKIN-SANCHEZ: You're done.

13 MR. SUPLEE: Which is not the case.

14 MS. BUCKIN-SANCHEZ: You can't solve
15 that overnight. It is just a matter, like
16 anything, like DEQ working with the public.

17 The other comment I had is on the
18 economic impact or -- what do you call it -- the
19 measure of whether it is feasible economically at
20 this point with the triennial review.

21 That's going to depend on the loan and
22 grant package that the community can pull
23 together, because you won't know the economic
24 impact until you have that loan and grant package.
25 And in order to do that, you'll need to, the

32
1 community would need to apply for funding. And a
2 lot of the funding is on a biennial basis, so to
3 come up every three years with a report that talks
4 about the economic impact, the community would
5 actually --

6 How would that work? Would they have to
7 actually apply for the grant, or would it depend
8 on what they've gotten, or -- Help me through that
9 part.

10 MR. SUPLEE: Sure. So we're talking
11 about individual variances now. So this would be
12 a community that says -- Their permit comes up for
13 renewal. Permitting says, "Here is the number you
14 need to meet at the end of the mixing zone," and
15 they indicate they can't meet those. So then
16 Permitting says, "Okay. Well, can you meet the
17 general variance numbers? Can you meet two and
18 fifteen?," for example. "We can't meet those
19 either. It's really expensive."

20 So at that point their option is they
21 can -- We have a whole series of tools available
22 where they can -- we would work with them on this
23 -- fill out information regarding the cost to
24 achieve some level of improvement. And once it
25 has been demonstrated that trying to meet the

1 standards is too expensive via this demonstration
2 then -- Okay. Go ahead.

3 MS. BUCKIN-SANCHEZ: So the cost is
4 based on no subsidization, no grants, no loans.

5 MR. SUPLEE: Right. And then they would
6 look at that cost, and then if they can
7 demonstrate that that would be a problem, that
8 really is a financial burden for them, then they
9 can apply for the individual variance, and
10 establish a different, more coarse concentration
11 that they can get to.

12 And that can be based on probably some
13 kind of a percentage of median household income --
14 something like one to one-and-a-half percent MHI
15 is generally the rule of thumb that would be used
16 -- to determine what that cost cap ultimately
17 would be, in other words, what the facility they
18 actually will build would look like.

19 In the interim time -- because a lot of
20 times, like I said, there is delays, and there is
21 grants coming and going. Permitting has -- they
22 can put people on compliance schedules while a lot
23 of these things get worked out, so they will never
24 be operating or not operating under a permit
25 during that time.

1 MS. BUCKIN-SANCHEZ: I understand.

2 Thank you.

3 MR. SUPLEE: Other questions about
4 individual variances?

5 MR. SMITH: One of the questions that's
6 kind of out there is: How does your one percent,
7 one-and-a-half percent, compare to the target rate
8 that the Department of Commerce uses for your
9 rates, that a community that -- 50 to 55 percent
10 of your people in a low to moderate income has a
11 target rate. How does that one to one and a half
12 percent compare to the target rate?

13 MR. SUPLEE: The target rates for --

14 MR. SMITH: They're for grants and
15 loans.

16 MR. SUPLEE: They traditionally use I
17 believe .9 percent MHI, and that's the target rate
18 for water, and water, and wastewater. So that's
19 the focus up in the SRF program and stuff. When
20 they're figuring out who gets grants and loans,
21 that's their target. So it is higher, but it is
22 close.

23 MR. SMITH: Because right now they want
24 you to be at or slightly above your target rate to
25 compete for grants and loans. So any of these new

standards for most of these communities following these rules are already at that one to one-and-a-half percent.

MR. SUPLEE: So it would be a case where if it was concluded, for example, that to move from the current facility to another facility that isn't even at the general variance level, but just something better, would cost 2 or 3 percent MHI, then the Department would not require them to do that upgrade. It would be too expensive. That would be in the case of an individual variance.

MR. SMITH: Right.

MR. SUPLEE: So maybe -- I know that a lot of people have found this complicated, so maybe it would be useful to kind of walk through this flow chart, and it kind of explains to people what the options will be looking like going forward.

So this little chart is called, "How will my permit change as DEQ updates concentration requirements for a general variance?"

So the statute basically has said that every three years we have to look at those concentrations that were established in statute, we have to adopt those; but then we have to look

1 at them and say, "Are those still appropriate? Do
2 those still represent an appropriate level of
3 technology for removing nutrients, or has the
4 technology changed, and become cheaper, such that
5 maybe we should change them to something more
6 stringent as we kind of ratchet and work our way
7 down towards the standards?"

8 So under the assumption going forward
9 that we do at some point in time make those
10 concentrations more stringent -- Let's say the one
11 and ten, for example, changes to .5 milligrams TP
12 and eight milligrams TN per liter. Let's say we
13 do that in 2019, for example. So then the
14 question is: How would that affect me as a
15 permittee?

16 So that's where in this little box here,
17 if you look in the upper left-hand corner where it
18 says "Start." So circa 2016, the reason that's in
19 there is that's the date when the numbers defined
20 in statute sunset, and then they become Department
21 rules or we update them to some other numbers, the
22 general variance numbers, the treatment levels.

23 So at that time, permittees will either
24 be meeting the standards -- like for example on
25 the Clark Fork where they're pretty much already

1 doing that -- they're meeting a general variance,
2 or they're in compliance to do that, or they may
3 be meeting an individual variance or on a
4 compliance schedule to do that.

5 That would be the general place that
6 folks would be by 2016, under the assumption that
7 the standards would be adopted within a year. If
8 the delay is longer, it all pushes forward, but
9 under the assumption that -- because by then
10 almost every permit will have been looked at since
11 they get looked at every five years.

12 So we do our review, and let's say 2016,
13 2019 comes along -- following the arrow down --
14 DEQ reviews the general variance categories every
15 three years. The three year review indicates
16 there are more cost effective and efficient
17 nutrient removal technologies for a particular
18 discharge category greater than one MGV or less
19 than one MGV.

20 If no, then we just carry it forward.
21 So in other words, if nothing has really changed
22 out there, there is no new technologies, the costs
23 really haven't changed that much, the one and the
24 ten, and the two and the fifteen may stay static
25 for some period of time.

1 However, if there is something out there
2 that we know can be implemented and it's workable,
3 then the Department would go ahead and update
4 those categories, and then Permitting would look
5 at all folks as their permits sunset, that are
6 operating on a general variance, and say, "Okay.
7 You guys used to be able to operate on a one and
8 ten. It is now .5 and eight. Can you achieve
9 that?"

10 If it is yes, they'll make those
11 changes, get them in place on the facility. But
12 if not, they do have a number of other options,
13 and this kind of gets at where those options come
14 in.

15 So if you look in this big square box
16 over here on the right-hand side, up at the top it
17 says, "DEQ updates the general variance treatment
18 level for one or more categories. Am I required
19 to meet the updated treatment levels?" You are
20 unless, one, it is too costly -- in which case you
21 can apply for an individual variance, which we
22 talked about.

23 Number two, the facility moves to a zero
24 waste load allocation, nondischarge in the summer
25 -- I think, Karen, you asked me about that. Can a

1 person not discharge during the summer? Yes.

2 Then that is actually a pretty realistic option
3 for smaller communities in eastern Montana who
4 have a fair amount of available land, where they
5 can grow crops, wheat, or alfalfa, at least for
6 those few months. So that's a possibility.

7 Another change that could occur is that
8 there may have been enough cleanup upstream in
9 nonpoint source in a perfect world where there is
10 now assimilative capacity, in other words, there's
11 enough dilution in the river to be able to allow
12 you to meet the standards at the end of the pipe,
13 so you wouldn't need a variance.

14 In some cases the TMDL may conclude that
15 the discharge is just not a significant part of
16 the problem. You may be a very small discharger
17 into a highly agricultural watershed where it is
18 demonstrated that most of the nutrients are coming
19 from ag runoff, for example, in which case they
20 might just give you a very low or nonexistent
21 waste load allocation.

22 So that's another case where you
23 wouldn't need the variance because they have
24 basically approved a low value. In other words,
25 status quo is acceptable for your facility. There

1 has already, I believe, been one case like that
2 for metals TMDL, if I understand correctly.

3 And then the fifth one there is the
4 upgrade to a new -- to the upgraded general
5 variance treatment level would not result in
6 overall environmental improvement and progress
7 towards the standard.

8 So a number of the larger communities
9 have come to us and said, "We can bring down
10 phosphorus levels pretty fast and efficiently.
11 Nitrogen is expensive for us. So what happens
12 if we have either empirical data from the river or
13 modeling data that show that we can get the same
14 effect in the river by knocking down the nitrogen
15 -- or the phosphorus than we would if we put down
16 the nitrogen and the phosphorus? What would you
17 guys think of that?"

18 We said, "Well, if it is good data and
19 it's a good model, we would accept that." So that
20 would be yet another option, kind of a slight
21 variation on the individual variance, that has
22 been very important to the large wastewater
23 dischargers to have that option available to them.

24 We're talking about Billings, Missoula,
25 large communities that would probably have money

1 and time to hire a consultant to actually develop
2 these sorts of models. This is not something that
3 would apply to Ekalaka, for example.

4 But for the bigger communities, it may
5 be the most prudent and efficient use of their
6 money to make sure that we get the river cleanup
7 without spending money on problems that maybe they
8 can't make big difference if they change their
9 ways anyway.

10 All of this, as you guys know, is
11 predicated on the idea that roughly twenty years
12 out the standards will be met. Whether that
13 actually happens is going to largely depend on how
14 well the engineering community begins to work on
15 and improve some of these treatment systems.

16 There is a lot of things that are sort
17 of out there in beta testing -- I guess is the
18 right term -- that could be applied. They can
19 bring nutrient levels down far lower than what
20 current facilities are doing. And so the
21 Department is sort of banking on the idea that
22 those will evolve to the point where they can be
23 applied, and so that's why this variance process
24 essentially buys time, and we don't expect the
25 standards to be met overnight.

1 And there's still the possibility at the
2 end of the twenty years that if you can't meet the
3 standard, then we may have to go back to the
4 Legislature, but there is still a possibility that
5 we could extend the variance process so it goes
6 even further, if it appears that technologies are
7 changing and progress is steadily being made,
8 or --

9 And this has generally been the final
10 option that the standards section would go to.
11 You can revisit the beneficial uses of the river
12 or stream, and reclassify them to something lower
13 if they cannot meet the standard to set them at
14 basically existing conditions.

15 We've been hesitant in Montana to do
16 that. We do that very infrequently because our
17 view is it makes sense to try to fix the problem
18 before you simply just give up, and that's
19 essentially what this whole process, as complex as
20 it is, is attempting to work towards.

21 So I guess I'm done. I know there is a
22 lot of stuff in here, but I'd be happy to answer
23 any other questions on any of this that you may
24 have regarding this whole package.

25 One last quick thing. I did not go over

1 the guidance document, but essentially this
2 guidance document has two pieces. One, it talks
3 about, "How do I apply for and fill out
4 information for that individual variance?" that we
5 talked about earlier; and then it has a part in
6 the back that talks about, "How do I go about
7 developing that model or collecting that data if I
8 think that phosphorus is more important than
9 nitrogen? We can get to the same place by just
10 treating one." That's what's in there.

11 MS. WILLIAMS: We've had this
12 conversation before, but as you mentioned, this is
13 banking on the technology improving. So what
14 incentives are there in place for programs, or
15 DEQ, or otherwise, to try and move that along?

16 MR. SUPLEE: Well, I guess there is
17 several things that -- George, when he comes and
18 talks, he often talks about the nutrient package,
19 which is not just the standard, so I'll do my best
20 to cover that.

21 But some examples would be: If these
22 criteria are adopted, then in 2009 there was -- I
23 believe it was Senate Bill 200 that was passed,
24 which is the phosphorus ban for laundry soaps.
25 That would be instituted at that point once these

1 standards are adopted.

2 Right now that law only applies along
3 the Clark Fork Basin, because that's the only
4 place there are nutrient standards. But in the
5 rest of the state, it would go into place. And
6 many manufacturers of laundry soaps are already --
7 we're talking dish soaps, not the other types of
8 soaps, so dish soap -- have already begun to
9 remove phosphorus from that.

10 Historically that has proven to be an
11 extremely effective way, one of the most effective
12 ways to knock down excess phosphorus levels in
13 rivers and streams, not to have it get to the
14 facilities through people's gray water to begin
15 with. So that would be -- that's one thing that
16 would kick in by having this in place.

17 We believe that the incentive would be
18 that ultimately since people are looking towards
19 meeting a standard twenty years down the road,
20 there would be naturally a sort of a drive to come
21 up with those technologies to put in place because
22 of the incentive for profit from the engineering
23 community, especially if this becomes more and
24 more widespread.

25 I know there are already some startup

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1 companies right here in Montana who are looking to
2 see if their systems can ultimately be put in
3 place for this.

4 And there are other things that the
5 Department has been working on, including reuse
6 and recharge rules. Water reuse has been made
7 more easy to implement in big cities, so that
8 tends to allow people to reuse their water, and so
9 therefore that's another approach where the water
10 never gets back to the river, gets reused for
11 people's lawns, and those sorts of things. So
12 that's a partial answer.

13 Other questions pertaining to the
14 overall process? Is there any real strong
15 confusion on how it generally works, or do you
16 mostly kind of see how this pieces together?

17 MR. TYLER: This is coming up as an
18 action item next meeting, correct?

19 MR. SUPLEE: That's the plan, yes.
20 Right now the plan is to assuming -- we have
21 another Nutrient Work Group meeting the middle of
22 next month, and then it would be an action item on
23 -- Unless we hit a derail, it would be an action
24 item on -- The next meeting is the 2nd of
25 November, I believe -- and then it would be

1 proposed to the Board for rulemaking on December
2 7th.

3 Right now really one of the biggest --
4 We've gotten a lot comments back from the League
5 of Cities and Towns, from industry, from
6 railroads, a lot of different people who have been
7 working with us on the Nutrient Work Group; and
8 right now, one of the bigger hangups is
9 nondegradation, because we're talking about
10 fractions of small concentrations.

11 And we're actively engaged right now
12 with some of the experts in the mining industry
13 about blasting to find out what kind of
14 improvements can be made, because large
15 concentrations of nitrogen often come out of
16 mines, and it turns that there is probably a lot
17 of room for improvement there, just by BMP's of
18 the mines.

19 So we're kind of learning about that,
20 and we plan to have further discussions with those
21 folks, because that's a pretty big concern. They
22 often operate in small headwater streams where the
23 concentrations are low.

24 Yes, so action item as of November, yes.
25 And I think ideally unless we see huge changes,

1 what you would be taking action on would be like
2 pretty much what you've seen here, as far as we
3 know, because a lot of the comments from our
4 stakeholders and from EPA have already been
5 incorporated into this version.

6 MS. NEUMAN: I have just one question on
7 downstream states that use our water. Are you
8 familiar with any of their variance rules or
9 guidelines or --

10 MR. SUPLEE: In terms of downstream
11 states -- Well, Colorado is not a downstream
12 state, but they are a regional state who have
13 adopted some nutrient standards, and their process
14 is a little different than ours. If we need to
15 explain it, I'll have Tina do it, but --

16 MS. NEUMAN: -- (inaudible) -- on the
17 Missouri -- (inaudible) --

18 MR. SUPLEE: We've actually heard very
19 little from our neighbors. So for example, North
20 Dakota is the recipient of the
21 Missouri/Yellowstone. We have criteria for the
22 Yellowstone that go right up to the North Dakota
23 border.

24 I've spoken directly with their
25 standards person, we've sent them emails and

1 letters, and we've gotten nothing back at all. So
2 apparently they're not worried about it, they're
3 not concerned with it, or they're worried about
4 other things, but they don't seem to be --

5 MS. NEUMAN: (Inaudible)

6 MR. SUPLEE: Well, the interesting thing
7 about the Yellowstone is that the concentrations
8 that we're suggesting are considerably higher than
9 the river's current status. The concentrations
10 that the river is at right now are considerably
11 better than the criteria we recommend. So they
12 would, in theory, if it ultimately went up close
13 to the standards or somewhere near the standards,
14 they would see worse water quality.

15 MS. NEUMAN: Then we're doing a pretty
16 good job.

17 MR. SUPLEE: We haven't heard anything
18 from them, so I guess it's okay as far as I'm
19 concerned.

20 MS. WILLIAMS: And EPA has approved the
21 State's approach?

22 MR. SUPLEE: They have said that overall
23 the approach that we have put together -- which
24 includes the standards, the variances, and
25 everything -- is I would say probably 95 or more

1 percent acceptable. I think there's a few little
2 tweaks here and there, but they're getting down to
3 really minor issues.

4 My understanding is the peer review for
5 the actual criteria just came back yesterday. EPA
6 sends it out to academics in the environmental
7 science world, and have them review these things,
8 and they came back quite favorably, is my
9 understanding. I haven't seen them yet. But the
10 overall package, variances, and all that, yes, is
11 largely accepted by EPA.

12 MS. WILLIAMS: Do we get an official
13 acceptance before it goes to the Board, or how
14 does that work?

15 MR. SUPLEE: Well, probably not. My
16 guess would be -- What we're trying to do is get
17 everything worked out up front. So I don't know
18 if they would actually send us an official
19 acceptance up front, but I think we would know for
20 sure if there was a real deal killer from EPA's
21 perspective well before we went to the Board. So
22 far it doesn't look like there is any.

23 And then once the Board adopts, and then
24 it goes to EPA for official approval, that's when
25 they would have to really -- that's their point in

1 time to either accept or accept with qualification
2 the standards and the standards package. But so
3 far -- Tina, do you want to speak to this at all?

4 MS. LAIDLAW: I think you represented it
5 well. We've been working closely with the
6 Nutrient Work Group and with DEQ to resolve any
7 concerns we have, and as Mike said, there's still
8 some fine tuning we're doing, but for the most
9 part we think that the State has done a really
10 good job in deriving scientifically sound
11 criteria, and developing the implementation of,
12 and addressing the implementation approach that
13 will hopefully comply with the EPA regulations.

14 So we wouldn't take any official
15 approval action until we've received the package
16 from the Board from DEQ.

17 MR. SUPLEE: Any other questions or
18 comments that I can go over?

19 CHAIRMAN SELCH: Thanks, Mike. I
20 appreciate it. We'll take a five minute break and
21 we'll hear from Rod. Back at 11:07.

22 (Recess taken)

23 CHAIRMAN SELCH: We'll get rolling here
24 again, everyone. We have got Rod up next here
25 talking about the DEQ7 updates.

1 MR. McNEIL: Thank you. Mr. Chairman,
2 members of the Council, my name is Rod McNeil, and
3 I'm with the DEQ in the Water Quality Standards
4 Section.

5 You recommended that we take new DEQ7 to
6 the Board back in April, which we did. We
7 recommended to bring it forward as an action item,
8 and proceed with rulemaking. We held our public
9 hearing on July 12th, and took public comment.

10 We received about dozen public comments,
11 pretty limited given how much stuff is stuck in
12 DEQ7. And in reviewing those, we found that only
13 three of the comments really indicated that we
14 should reconsider what we had originally done with
15 DEQ7 in terms of changes, and those are what I'm
16 going to discuss with you.

17 First we had reclassified cadmium as a
18 carcinogen. We did that for reasons that the
19 portion of the exposure by contact or inhalation
20 is considered through aerosol exposure, so the
21 dissolved cadmium in the aerosol does have a
22 carcinogenic component when calculating the
23 inhalation carcinogenicity of cadmium.

24 However, that can't be used
25 independently. We discussed this with the experts

52
1 on cadmium and the EPA, and they didn't feel it
2 appropriate for ingestion purposes to use that
3 same cancer slope index. So we did decide to
4 revert the categorization of cadmium from
5 carcinogenic back to toxic.

6 The impact on this, the numerics haven't
7 changed at all, so this would change basically the
8 application of cadmium in terms of nondegradation.
9 Otherwise it would not have any impact.

10 Tetrachloroethylene was another compound
11 that we had changed the classification. Part of
12 the process when we go through and review DEQ7 was
13 to check what's called IRIS, the Integrated Risk
14 Information System which EPA has, to see that
15 we're reflecting the most current scientific
16 information.

17 And when we did that in about November
18 of 2011, the classification of tetrachloroethylene
19 -- also known as PCE -- had been changed from
20 carcinogenic to toxic. And so that was the
21 rationale for making the change.

22 But then in February of this year, new
23 information was published, again in IRIS, which
24 indicated that it was in fact carcinogenic, and we
25 reverted back to that. So we feel that it is

1 appropriate to leave tetrachloroethylene as
2 carcinogenic.

3 The third area where we received several
4 comments related to our mentioning DEQ12 in DEQ7.
5 A number of people felt that this in doing that
6 was premature, and that it created undue pressure
7 to accept DEQ12. We were just trying to keep
8 things in line, and mention things, keep the
9 process rolling, avoid having to do this on an
10 annual basis.

11 DEQ7 is a lot of information, and you
12 don't want to have to spend every year updating
13 it. We hope to eventually get this to a point
14 where it's updated in a triennial review fashion,
15 because just about the time people figure out
16 where everything is in DEQ7, we change it. So
17 they would prefer that we left it alone for at
18 least a little while.

19 So we basically agree, though, that it
20 is probably premature to include DEQ12, so we've
21 retracted mention of DEQ12 from DEQ7, and
22 reinstated the narrative nutrient standard
23 footnote, which is Footnote 8 in DEQ7, so that the
24 narrative standard is referred to. Regardless,
25 the narrative standard would have been in place in

1 any case, but now we've just put it back in
2 temporarily.

3 And then Mike will come along and with
4 his change in the rule package will eliminate some
5 of the same stuff that we were trying to make
6 mention of in DEQ7. So when the rule package is
7 approved, the process for DEQ12 will put back into
8 DEQ7 some of the things that we were trying to do,
9 some people felt prematurely.

10 So those are really the only changes
11 from what I've covered with you previously. If
12 you have any questions about those, or any of the
13 other comments that we have provided you with
14 copies of, I'd be happy to address them.

15 Our plan is to take DEQ7 to the Board in
16 September for a final rulemaking approval, and
17 this would then be published in October. And the
18 package that you received a copy of as you came
19 through the door is the new DEQ7 in DP2 format to
20 meet Department requirements, and we've gone
21 through innumerable reviews to make sure all of
22 the numbers are right, and all the letters in are
23 the right places, but it should be very close to
24 this as you see it finally published.

25 Are there any questions?

1 MS. BUCKIN-SANCHEZ: I want to ask. DP2
2 format.

3 MR. McNEIL: It is a Department
4 standardization format for how all written
5 documents are to be produced. It standardizes
6 everything, from justification, to capitalization
7 requirements, and font, type size, everything. So
8 it is a big thick document that I have yet to
9 fully comprehend.

10 MS. BUCKIN-SANCHEZ: Like the manual
11 they give you to write your thesis or something.

12 MR. McNEIL: Yes, sort of like that, but
13 written to follow State regulations.

14 MS. BUCKIN-SANCHEZ: Then I want to say
15 thank you very much for providing a copy of the
16 public comments so that we can see what the public
17 comment is on it. That's helpful.

18 MS. WILLIAMS: Yes, that is helpful.

19 CHAIRMAN SELCH: Any questions for Rod?
20 You're just bringing this to the Board, so you
21 won't be bringing this back in front of us?

22 MR. McNEIL: No.

23 CHAIRMAN SELCH: I appreciate it. Thank
24 you, Rod.

25 We just have one brief action item

1 today, and this is a resolution of thanks that
2 Dude brought up at our last meeting. I appreciate
3 his willingness to put this together because
4 number one, I don't think I've had time in the
5 office, and more importantly I don't have the
6 ability to write like this.

7 So I think Dude was going to read this,
8 I guess, first and foremost to the Council, since
9 his name is on the agenda.

10 MR. TYLER: Thank, you Trevor, and the
11 authorship goes to the staff by the way. Correct?

12 MS. CRIDER: Amy.

13 MR. TYLER: Thanks, Amy. Well, my
14 theory was let's get him a shotgun, but we're all
15 broke, so I'll just read the resolution.

16 "Whereas the Water Pollution Control
17 Advisory Council serves in an advisory capacity to
18 the DEQ; and whereas the Council furnishes advice,
19 gathers information, makes recommendations, etc.,
20 etc.; whereas Bob Bukantis diligently served the
21 Department for 24 years, the last eight of which
22 he was supervisor of the Water Quality Standards
23 Section; and whereas Bob Bukantis served as the
24 secretary to the Council for ten years informing
25 the Council about Department matters

1 constructively, participating in discussion as the
2 Counsel addressed the varied matters that came
3 before it; and whereas Bob Bukantis has been
4 instrumental in writing and implementing water
5 quality standards of the State of Montana; and
6 whereas Bob Bukantis has been a willing and
7 engaged partner with the Council, and jointly
8 working toward the improvement of water quality in
9 the State;" and -- Does everybody have this? Do I
10 need to read this?

11 CHAIRMAN SELCH: Yes, you do.

12 MR. TYLER: Okay. Most importantly,
13 "Whereas Bob Bukantis was consistently a
14 diplomatic, cooperative, and able working partner;
15 and whereas Bob Bukantis has retired from
16 employment with the State; therefore be it
17 resolved that the Water Pollution Control Advisory
18 Council commends Bob Bukantis for his dedication
19 and hard work on behalf of the State of Montana;
20 and be it further resolved that the Water
21 Pollution Control Advisory Council does hereby
22 extend to Bob Bukantis its sincere thanks and
23 appreciation for a job well done; and be it
24 finally resolved that the members of the Water
25 Pollution Control Advisory Council wish him a most

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1 rewarding and pleasant next phase of life."

2 "Adopted the 24th day of August," today,
3 by us, if so moved and seconded and approved. And
4 then so the ask would be for a -- I would hope to
5 see a unanimous vote following a motion to approve
6 this resolution of thanks, and then we were going
7 to get it to the Governor to get it signed. And
8 was that Amy's --

9 MS. STEINMETZ: I talked to Richard
10 Oppenheimer, and he said that the Governor does not sign
11 these documents that others produce. He will
12 write a thank you, a little postcard, if we draft
13 a couple lines.

14 I think the Council has a couple of
15 choices. You can all sign it, put your names to
16 it, we can have Trevor sign it certifying that it
17 was produced by the Council, what happens; or you
18 could write a couple of lines and have the
19 Governor send a postcard as well as a resolution,
20 but he won't put his name on this document
21 apparently.

22 MR. TYLER: A challenge. So anyway,
23 there you have it. Thank you.

24 CHAIRMAN SELCH: Thanks for reading
25 that, Dude. Thanks for everyone that put that

1 together. If anyone has any additions or
2 something they'd want in there, otherwise we're
3 looking for a motion to approve the resolution,
4 and I guess what we want to do, whether you want
5 it to be signed on behalf of the Council, or if we
6 all wanted to sign that and present that to Bob.

7 MR. TYLER: I would so move, and also
8 will deliver it to Bob because he's in Bozeman
9 quite a bit.

10 MR. WENDLAND: I'll second.

11 CHAIRMAN SELCH: Voice vote. All in
12 favor.

13 (Response)

14 CHAIRMAN SELCH: Opposed.

15 (No response)

16 CHAIRMAN SELCH: It doesn't look like we
17 have any members from the public here. And so I
18 guess before Amy gracefully pointed out with
19 Robert Rules that if it is a non-controversial
20 topic that we don't need a motion to carry
21 something. So for like agendas and the minutes,
22 we'll probably just ask for comments, and if there
23 is no objection, we'll move forward.

24 So the next item is just our agenda
25 items for next meeting. We just heard that Mike

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1 is planning on coming back to present the rule
2 package for adoption. And I don't know if you've
3 heard of any other agenda items.

4 MS. STEINMETZ: A couple things that
5 have kind of been on the docket for awhile. One
6 of them is CAFO. I don't know if we might get
7 something here, a briefing item. That's
8 Concentrated Animal Feeding Operations through
9 Permitting. So I don't know if they'll come
10 forward with a briefing item or an action item. I
11 really don't know where they are at with that, but
12 I do know that it's something that they're working
13 on.

14 And also DEQ4, that's the subsurface
15 wastewater treatment system. I heard possibly
16 later this year for that one, too. Those are a
17 couple that might be coming up.

18 MS. CRIDER: The calendar.

19 MS. STEINMETZ: We'll have to schedule
20 the first meeting for next year at that meeting,
21 and then we come back and do the whole calendar
22 after BER schedules their calendar. We'll have to
23 talk about it first.

24 MR. TYLER: I tried to get some traction
25 on a field meeting in Williston or Sidney, and I

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1 couldn't get any traction in here. I tried, too.

2 MS. WILLIAMS: I guess I would ask Amy
3 if this might be a relevant agenda item. But I'm
4 hearing -- There has been in the news that I get a
5 lot of discussion about status of the Clean Water
6 Act, and the extent to which it covers adjacent --
7 however that's defined -- waterways, and that EPA
8 was just reprimanded by the Courts to not regulate
9 through guidance.

10 So I'm just curious if that topic is
11 relevant to the State, whether we could have a
12 briefing on that, and then what the relevance is
13 to the State. And it is too bad Tina is not here.
14 So if you could maybe --

15 MS. STEINMETZ: I can look into it.

16 MS. WILLIAMS: -- check, or I can
17 coordinate with you, check into that, because it
18 seems like we're in a little bit of limbo, and I'm
19 not quite sure what that means for Montana. I'd
20 be interested in that.

21 MS. STEINMETZ: Is that something
22 that --

23 MS. WILLIAMS: If others are.

24 MR. TYLER: What is the next meeting
25 date?

1 MS. STEINMETZ: November 2nd.

2 MR. TYLER: I have a conflict. I will
3 not be in attendance.

4 Amy, will you create a document that
5 Trevor signs on this, or can he just sign what we
6 have?

7 MS. STEINMETZ: I actually drafted
8 something that is the same thing at the top, and
9 then it says, "I hereby certify that the
10 resolution was approved by a majority vote of the
11 active members present at the regular meeting of
12 the Water Pollution Control Advisory Council,
13 dated this 24th day of August." So if you want
14 to, you can sign this one.

15 CHAIRMAN SELCH: Do you want to present
16 it like this, or do you want to --

17 MS. NEUMAN: Do you want to say
18 unanimous vote?

19 MS. STEINMETZ: Yes. I can change that.

20 MR. TYLER: Does he still come into the
21 office?

22 MS. CRIDER: I've seen him once.

23 MR. McNEIL: Rarely.

24 CHAIRMAN SELCH: I was hoping he was
25 going to be here today because he took my new

1 technician out bike riding, and she fractured her
2 clavicle, so I was hoping he was going to show up
3 today.

4 MS. BUCKIN-SANCHEZ: Do we need money
5 for a frame?

6 CHAIRMAN SELCH: I think I have one I
7 can use, a brand new one that I had left over from
8 another meeting. I have a real nice plaque we can
9 put it in for him. I'll get that to you guys and
10 get it going.

11 MR. TYLER: So you'll have it here, and
12 maybe you can catch him in town, and give it to
13 him?

14 MS. BUCKIN-SANCHEZ: Are you going to
15 chastise him about the clavicle first, or give
16 him --

17 CHAIRMAN SELCH: I'll let him off the
18 hook. He was just a member of the team.

19 MR. TYLER: Can we amend the resolution
20 to say whereas --

21 MS. WILLIAMS: Notwithstanding recent
22 accidents.

23 Amy, does DEQ4 deal with -- I've had
24 someone at MSU comment about composting toilets.
25 Does DEQ4 cover that, or is that under Solid

1 Waste?

2 MR. McNEIL: It does. There is a new
3 section covering composting toilets.

4 MS. WILLIAMS: Okay. Great.

5 CHAIRMAN SELCH: It looks like our
6 November 2nd meeting there is a number of briefing
7 items and potentially action items, so we'll plan
8 on an in-person meeting. We'll obviously get that
9 out to you with the agenda in October. And also
10 bring -- like Amy mentioned -- we'll have to pick
11 our first date for 2013, so bring your calendars,
12 and we'll try and hammer out that date so we'll
13 have the first date set for then.

14 Any other comments? With that, we'll
15 adjourn.

16 MR. SALLEY: Motion to adjourn.

17 (The proceedings were concluded
18 at 11:29 a.m.)

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C E R T I F I C A T E

STATE OF MONTANA)

: SS.

COUNTY OF LEWIS & CLARK)

I, LAURIE CRUTCHER, RPR, Court Reporter,
Notary Public in and for the County of Lewis &
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 64 - pages contain a true
record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal
this _____ day of _____, 2012.

LAURIE CRUTCHER, RPR

Court Reporter - Notary Public

My commission expires

March 12, 2016.

<p>1</p> <p>1 30:2, 30:2 100 18:8 10:00 1:12 111 1:8 1192 1:22 11:07 50:21 11:29 64:18 12 65:22 12A-2 20:22 12th 51:9 14Q-5 22:24 14Q5 23:4 1520 1:9 1960s 26:10</p> <p>2</p> <p>2 35:8 2.2 22:16 200 3:12, 43:23 2002 12:1 2006 27:11 2009 43:22 2011 27:23, 52:18 2012 1:11, 65:17 2013 64:11 2016 36:18, 37:6, 37:12, 65:22 2019 36:13, 37:13 23 3:20 24 56:21 24th 1:11, 58:2, 62:13 29th 5:1, 5:11, 6:5 2nd 45:24, 62:1, 64:6</p> <p>3</p> <p>3 8:1, 35:8 30 9:6, 15:24 300 9:7</p> <p>4</p> <p>4 20:23 406 1:24 442-8262 1:24</p>	<p>5</p> <p>5 23:10, 36:11, 38:8 50 34:9 55 34:9 56 3:4 58 3:4 59624 1:23</p> <p>6</p> <p>64 65:12</p> <p>7</p> <p>72 11:7 7Q10 23:1 7th 46:2</p> <p>8</p> <p>8 53:23 80 18:7</p> <p>9</p> <p>9 34:17 95 21:22, 48:25</p> <p>A</p> <p>A-1 19:24 a.m 1:12, 64:18 ability 27:3, 56:6, 65:14 able 28:20, 29:15, 29:22, 38:7, 39:11, 57:14 aboard 4:15 Absaroka 9:9 academics 49:6 accept 4:22, 40:19, 50:1, 50:1, 53:7 acceptable 39:25, 49:1 acceptance 49:13, 49:19 accepted 49:11 accidents 63:22 accounted 11:20 achieve</p>	<p>22:12, 28:20, 29:11, 29:15, 32:24, 38:8 achieving 28:23, 28:23 Act 61:6 action 5:5, 45:18, 45:22, 45:23, 46:24, 47:1, 50:15, 51:7, 55:25, 60:10, 64:7 active 62:11 actively 46:11 actual 21:21, 26:10, 49:5 added 21:10 addition 13:15 additions 5:6, 59:1 address 54:14 addressed 57:2 addressing 50:12 adjacent 61:6 adjourn 64:15, 64:16 adopt 23:17, 35:25 adopted 7:22, 12:1, 12:14, 14:14, 28:15, 37:7, 43:22, 44:1, 47:13, 58:2 adoption 24:17, 60:2 adopts 49:23 advice 56:18 advisory 1:4, 56:17, 56:17, 57:17, 57:21, 57:25, 62:12 aerosol 51:20, 51:21 affect 20:18, 36:14 affixed 65:16 ag 39:19 against 22:22 agency 4:4 agenda 4:17, 4:18, 4:24, 5:4, 5:7, 5:12, 5:18, 5:20, 56:9,</p>	<p>59:24, 60:3, 61:3, 64:9 agendas 59:21 agree 53:19 agricultural 39:17 agriculture 3:11 ahead 5:3, 33:2, 38:3 alfalfa 39:5 algae 12:14 algal 14:9, 16:7, 18:16, 25:20 allocation 38:24, 39:21 allow 39:11, 45:8 alone 53:17 alongside 20:5 already 8:18, 12:14, 16:21, 22:13, 35:2, 36:25, 40:1, 44:6, 44:8, 44:25, 47:4 alternative 26:10 amend 63:19 ammonia 15:6, 17:16, 24:5 amount 23:2, 27:19, 39:4 Amy 2:8, 4:11, 22:13, 56:12, 56:13, 59:18, 61:2, 62:4, 63:23, 64:10 Amy's 58:8 analysis 23:2 Animal 60:8 annual 53:10 anyway 6:20, 41:9, 58:22 apparently 48:2, 58:21 appears 42:6 application 8:8, 13:25, 15:1, 52:8 applied 41:18, 41:23 applies 44:2 apply 8:9, 17:9, 17:16,</p>	<p>17:16, 21:25, 22:20, 23:7, 24:3, 27:20, 29:5, 29:19, 31:9, 32:1, 32:7, 33:9, 38:21, 41:3, 43:3 appreciate 2:5, 30:17, 50:20, 55:23, 56:2 appreciation 57:23 approach 28:12, 45:9, 48:21, 48:23, 50:12 appropriate 10:3, 10:15, 11:22, 23:3, 23:18, 23:20, 24:15, 36:1, 36:2, 52:2, 53:1 approval 4:17, 4:25, 5:2, 5:25, 6:4, 49:24, 50:15, 54:16 approve 5:4, 5:10, 58:5, 59:3 approved 4:24, 5:13, 29:22, 39:24, 48:20, 54:7, 58:3, 62:10 April 51:6 areas 15:19, 15:23 arguing 19:4 argument 24:3 arrow 37:13 aspects 6:24, 29:8 assess 8:14, 8:18 assessment 8:12, 8:17, 21:18, 21:20 assimilative 39:10 associated 22:10, 25:22 assume 25:8 assuming 45:20 assumption</p>	<p>24:14, 36:8, 37:6, 37:9 attempting 42:20 attendance 62:3 August 1:11, 58:2, 62:13 authorship 56:11 available 26:24, 27:14, 27:20, 32:21, 39:4, 40:23 Avenue 1:9 average 23:12 avoid 53:9 awhile 60:5</p> <p>B</p> <p>B-1 19:24 B-2 19:24 B-3 19:24 background 4:2, 9:14 bad 18:21, 61:13 ban 43:24 banking 41:21, 43:13 basic 19:9, 26:24 basically 7:23, 10:8, 12:25, 15:15, 17:2, 20:4, 27:22, 35:22, 39:24, 42:14, 52:7, 53:19 Basin 44:3 batholith 8:23 become 36:4, 36:20 becomes 44:23 begin 26:24, 44:14 begins 18:18, 41:14 begun 44:8 behalf 57:19, 59:5 beneficial 42:11 BER 24:17, 60:22 best 6:17,</p>
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